

§ 4.221

(2) May be made upon any other party to the proceeding or upon a custodian of records on Indians or their trust property;

(3) Must be made in writing, and a copy must be filed with the administrative law judge or Indian probate judge; and

(4) May demand any documents, papers, records, letters, photographs, or other tangible things that are:

(i) Relevant to the issues;

(ii) In the other party's or custodian's possession, custody, or control; and

(iii) Not privileged.

(b) Upon failure of prompt compliance, the administrative law judge or Indian probate judge may issue an appropriate order upon a petition filed by the requesting party.

(c) On his or her own motion, the administrative law judge or Indian probate judge may issue an order to any interested party or custodian of records for the production of material or information that is relevant to the issues and not privileged. The administrative law judge or Indian probate judge may do this after notifying all parties at any time before closing the record.

(d) Custodians of official records will furnish and reproduce documents, or permit their reproduction, in accordance with the rules governing the custody and control of such records.

§ 4.221 Depositions.

(a) *Stipulation.* Depositions in connection with a formal hearing may be taken upon stipulation of the parties. Failing an agreement therefor, depositions may be ordered under paragraphs (b) and (c) of this section.

(b) *Application for taking deposition.* When an interested party files a written application, the administrative law judge or Indian probate judge may at any time thereafter order the taking of the sworn testimony of any person by deposition upon oral examination for the purpose of discovery or for use as evidence at a formal hearing. The application must be in writing and must set forth:

(1) The name and address of the proposed deponent;

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(2) The name and address of the person, qualified under paragraph (d) of this section to take depositions, before whom the proposed examination is to be made;

(3) The proposed time and place of the examination, which must be at least 20 days after the date of the filing of the application; and

(4) The reasons why the deposition should be taken.

(c) *Order for taking deposition.* If after examination of the application, the administrative law judge or Indian probate judge determines that the deposition should be taken, he or she will order its taking. The order must be served upon all interested parties and must state:

(1) The name of the deponent;

(2) The time and place of the examination, which must be at least 15 days after the date of the order except as stipulated otherwise; and

(3) The name and address of the officer before whom the examination is to be made. The officer and the time and place need not be the same as those requested in the application.

(d) *Qualifications of officer.* The deponent must appear before the administrative law judge or Indian probate judge or before an officer authorized to administer oaths by the law of the United States or by the law of the place of the examination.

(e) *Procedure on examination.* The deponent must be examined under oath or affirmation and must be subject to cross-examination. The deponent's testimony must be recorded by the officer or someone in the officer's presence. An applicant who requests the taking of a person's deposition must make his or her own arrangements for payment of any costs incurred.

(f) *Submission to witness; changes; signing.* (1) When the testimony is fully transcribed, the deposition must be submitted to the deponent for examination and must be read to or by him or her, unless examination and reading are waived by the deponent or by all other interested parties.

(2) Any changes in form or substance that the deponent desires to make must be entered upon the deposition by

the officer with a statement of the reasons given by the deponent for making them.

(3) The deposition must then be signed by the deponent, unless the interested parties by stipulation waive the signing, or the witness is ill or cannot be found or refuses to sign.

(4) If the deposition is not signed by the deponent, the officer must sign it and state on the record the fact of the waiver, the illness or absence of the deponent, or the refusal to sign together with the reason, if any, given therefore. The deposition may then be used as fully as though signed, unless the administrative law judge or Indian probate judge holds that the reason given for refusal to sign requires rejection of the deposition in whole or in part.

(g) *Certificates by officer.* The officer must certify on the deposition that the deponent was duly sworn by the officer and that the deposition is a true record of the deponent's testimony. The officer must then securely seal the deposition, together with two copies thereof, in an envelope and must personally deliver or mail the same by certified or registered mail to the administrative law judge or Indian probate judge.

(h) *Use of depositions.* (1) A deposition ordered and taken in accordance with the provisions of this section may be used in a hearing if the administrative law judge or Indian probate judge finds that:

- (i) The witness is absent;
- (ii) The witness's presence cannot be readily obtained;
- (iii) The evidence is otherwise admissible; and
- (iv) Circumstances make it desirable in the interest of fairness to allow the deposition to be used.

(2) If the interested party on whose application a deposition was taken refuses to offer the deposition, or any part thereof, in evidence, any other interested party or the administrative law judge or Indian probate judge may introduce the deposition or any portion thereof on which he or she wishes to rely.

§ 4.222 Written interrogatories; admission of facts and documents.

(a) An interested party may serve upon any other interested party writ-

ten interrogatories and requests for admission of facts and documents. The interested party may do this only if:

(1) The interrogatories and requests are served in sufficient time to permit answers to be filed before the hearing;

(2) A copy of the interrogatories and requests is filed with the administrative law judge or Indian probate judge; and

(3) The interrogatories and requests are drawn with the purpose of defining the issues in dispute between the parties and facilitating the presentation of evidence at the hearing.

(b) A party receiving interrogatories or requests served under paragraph (a) of this section must:

(1) Serve answers upon the requesting party within 30 days from the date of service of the interrogatories or requests, or within another deadline agreed upon by the parties or prescribed by the administrative law judge or Indian probate judge; and

(2) File a copy of the answers with the administrative law judge or Indian probate judge.

(c) Within 10 days after written interrogatories are served upon a party, that party may serve cross-interrogatories for answer by the witness to be interrogated.

§ 4.223 Objections to and limitations on production of documents, depositions, and interrogatories.

The administrative law judge or Indian probate judge may limit the time, place, and scope of discovery under §§ 4.220, 4.221, and 4.222. The administrative law judge or Indian probate judge may do this:

(a) Upon timely motion by any interested party, if that party also gives proper notice and shows good cause; or

(b) Upon his or her own motion if a party's dilatory tactics or unreasonable demands will delay the orderly progress of the proceeding or cause unacceptable hardship to a party or witness.

§ 4.224 Failure to comply with discovery.

(a) If a party fails to comply with discovery under §§ 4.220 through 4.223, without showing a satisfactory excuse